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Paper No. 24

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FEB 13 2005

In re Application of: :  
Akito Kuramata et al. :  
Serial No.: 09/313,764 :  
Filed: May 18, 1999 :  
For: OPTICAL SEMICONDUCTOR DEVICE :  
HAVING AN EPITAXIAL LAYER OF III-V :  
COMPOUND SEMICONDUCTOR :  
MATERIAL CONTAINING N AS A GROUP :  
V ELEMENT :

DECISION ON PETITION  
TO WITHDRAW HOLDING  
OF ABANDONMENT

This is a decision on the petition filed February 5, 2003, and resubmitted, via facsimile transmission on June 16, 2004, to withdraw the holding of abandonment in the above-identified application under 37 CFR § 1.181. No petition fee is required.

The petition is **GRANTED**.

The application was held abandoned for failure to timely reply to the non-final Office action of May 21, 2002. A Notice of Abandonment was mailed on January 27, 2003.

Petitioner asserts that the Office action of May 21, 2002 was not received. To support this assertion, petitioner provided a statement attesting that a search of the file jacket and docket records indicates that the Office action was not received and a copy of the docket records where the Office action would have been entered had it been received.

A review of the file record indicates no irregularity in the mailing of the Notice, and in the absence of any irregularity there is a strong presumption that the Notice was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Notice was not in fact received. The showing required to establish the failure to receive an Office action must include a statement from the practitioner stating that the practitioner did not receive the Office action and attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received. A copy of the docket record where the non-received Office action would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of

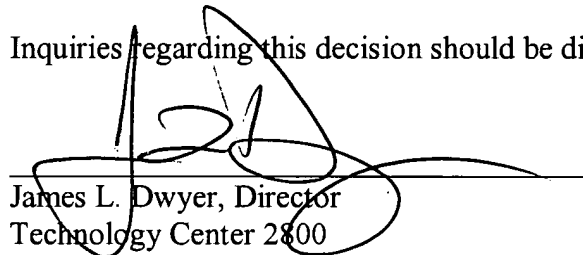
Abandonment When Office Actions Are Not Received" 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c).

The evidence is sufficient to establish a showing of non-receipt of the Office action of May 21, 2002.

For the above stated reason, the petition is granted. The Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

The application file is being forwarded to the Technology Center 2800 support staff for re-mailing the Office action. The shortened statutory period for response will be reset to run from the date the action is re-mailed. Extensions of time are available under 37 C.F.R. § 1.136(a).

Inquiries regarding this decision should be directed to Hien H. Phan at (571) 272-1606.



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